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Clyde L. Smith
Reg. No. 46,292
Thompson Coburn LLP
One US Bank Plaza
St. Louis, MO 63101
314-552-6338

Application of: LaBrash**Group Art No.:** 3634**Serial No.:** 10/809,241**Atty. Docket No.:** 66555-43733**Filed:** March 25, 2004**For:** I-BEAM MOUNTED
WORK LADDER**Examiner:** CHIN-SHUE, Alvin C.

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Commissioner of Patents
PO Box 1450
Alexandria, VA 22313-1450

PROVISIONAL ELECTION WITH TRAVERSE

This provisional election with traverse is in response to the Restriction Requirement imposed in the Office Action of April 24, 2005. In the Office Action, it is alleged that the application must be restricted to one of the following groups of claims:

I. Claims 1-9 & 14-16, drawn to a support structure having a ladder and platform, classified in class 182, subclass 84.

II. Claims 10-16, drawn to a support structure, classified in class 248, subclass 228.4.

III. Claims 17-21, drawn to a method, classified in class 182, subclass 129.

In support of this Restriction Requirement, the Office Action alleges that the combination invention of Group I does not require the particulars of the sub-combination invention of Group II for patentability. Additionally, the Office Action asserts that the sub-combination invention of Group II has utility by itself or in other combinations, apart from the utility of the combination invention of Group I.

Notably however, the Office Action fails to identify such any separate utility of the sub-combination invention of Group II as compared to that of the combination invention of Group I. In particular, the Office Action only suggests that the sub-combination invention of Group II has separate utility as a clamp for suspending a chair from an I-beam. This is not a separate utility because the combination invention of Group I can also be used as a clamp for suspending a chair from an I-beam. Thus, the Office Action fails to establish that the sub-combination invention of Group II has any separate utility from that of the combination invention of Group I.

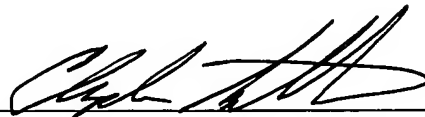
Additionally, while there may be two-way distinctiveness between the combination invention of Group I and the sub-combination invention of Group II based on some separate utility of the sub-combination invention of Group II (i.e., other than the common utility set forth in the Office Action), a restriction is only proper if there are legitimate reasons for insisting on restricting the inventions. MPEP §806.05(c). Applicant notes that claim 3, which is included in Group I, includes a pivotal connection adjacent to the upper flange of the I-beam, and that claims 12 and 14-16 are directed to support structures that each comprise a ladder. Thus, the field of

search between the separately grouped inventions would likely be identical for Groups I and II, and therefore Applicant submits that there is no legitimate reason for restricting the claims in the manner that they have been restricted. MPEP §808.02. Thus, Applicant submits that the restriction of the claims into Groups I and II is improper and should be withdrawn.

The Office Action also fails to provide any rationale or explanation for the restriction requirement between the combination invention of Group I and the method invention of Group III. Regardless of the distinctiveness of the sub-combination invention of Group II and the method invention of Group III suggested in the Office Action, the three-way restriction requires that a distinction also be made between the combination invention of Group I and the method invention of Group III. Thus, the three-way restriction is improper and should be withdrawn.

In view of the foregoing, Applicant requests that the Restriction Requirement be reconsidered and withdrawn. Nonetheless, in accordance with 37 C.F.R. §1.143, Applicant hereby provisionally elects claims 10-16 of group II for prosecution in the event the Restriction Requirement is maintained.

Respectfully submitted,



Clyde L. Smith, Reg. No. 46,292
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
Telephone: 314-552-6338
Fax: 314-552-7338